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SERVICE DATE – FEBRUARY 22, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21079

ACADEMY BUS, LLC AND FRANMAR LEASING LLC—PURCHASE OF CERTAIN
ASSETS OF DANIEL’S CHARTERS & TOURS LLC

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On January 23, 2018, Academy Bus LLC (Academy), a motor carrier of passengers; Franmar Leasing LLC (Franmar), a non-carrier; and Daniel’s Charters & Tours LLC (Daniel’s Charters), a motor carrier of passengers (collectively, Applicants) jointly filed an application under 49 U.S.C. § 14303 for Academy and Franmar to acquire certain properties of Daniel’s Charters. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 C.F.R. §§ 1182.5 and 1182.8.

DATES: Comments must be filed by April 9, 2018. The applicants may file a reply by April 23, 2018. If no opposing comments are filed by April 9, 2018, this notice shall be effective on April 10, 2018.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21079 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to: Joseph J. Ferrara, Ferrara and Associates, 111 Paterson Avenue, Hoboken, NJ 07030.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher (202) 245-0355. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Academy is a motor carrier licensed by the Federal Motor Carrier Safety Administration (MC-646780) that provides motor carrier passenger services in Florida and Georgia, with its principal place of business located in Florida. (Appl. 3, 8.) Applicants state that Academy (Florida) ESB Trust (Academy Trust), a non-carrier controlled by Francis Tedesco (the sole trustee), is the sole member of Academy. According to Applicants, Franmar is a non-carrier New Jersey limited liability company controlled by the Tedesco Family ESB Trust (Tedesco Trust), also a non-carrier. Applicants state that Franmar is exclusively engaged in the ownership and leasing of passenger motor coaches to Academy and

its affiliates.¹ Applicants further assert that Daniel's Charters, a licensed motor carrier of passengers (MC-351188), presently operates interstate charter motor coach transportation services and tour transportation services primarily in the state of Georgia. Applicants further state that Jimmy Cantrell is the majority member and manager of Daniel's Charters.

Daniel's Charters proposes to sell certain assets used in its motor coach passenger charter transportation business pursuant to an Asset Purchase Agreement, dated January 19, 2018. According to Applicants, this transaction is a result of the business determination made by Daniel's Charters to permanently withdraw from the motor coach transportation business and focus its efforts on the continued development of its tour business operations. Applicants state that, under the terms of the Asset Purchase Agreement, Academy will acquire Daniel's Charters' customer lists, charter contracts, telephone numbers, website, pending motor coach customer contracts existing as of the closing date, charter contract deposits associated with the pending contracts, and related assets and intangibles, and Franmar will acquire 32 of 34 motor coaches currently owned by Daniel's Charters. (Appl. 7.)

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicants submitted information required by 49 C.F.R. § 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b) and a statement, pursuant to 49 U.S.C. § 14303(g), that Academy and its motor carrier affiliated companies exceeded \$2 million in gross operating revenues for the preceding 12-month period.²

Applicants state that this acquisition is in the public interest because the transaction will not have a materially detrimental impact on the adequacy of transportation services available to the public. According to Applicants, Daniel's Charters will be selling all of its motor coach vehicles that it no longer desires to operate, no operable motor vehicles will be scrapped by Daniel's Charters, and no new buses will need to be purchased by Franmar at this time. Thus, Applicants state that the public would not lose service because the same number of buses would continue to operate. Applicants state that the transaction would promote more efficiencies and greater economic use of existing transportation capital resources, and offer the public continued service options to those customers of Daniel's Charters in need of such service.

¹ Applicants state that Francis Tedesco and Mark Tedesco are lifetime beneficiaries of the Tedesco Trust, which controls a New Jersey company, also called Academy Bus, LLC, a non-carrier and the sole member of three limited liability company passenger motor carriers: Academy Express, LLC, Academy Lines, LLC, and Number 22 Hillside, LLC (together, Academy Companies). According to Applicants, none of the Academy Companies are parties to the agreement with Daniel's Charters that is the subject of this application. Applicants state that Franmar and the Tedesco Trust are commonly controlled by Francis Tedesco and Mark Tedesco. (See Appl. 5-6.)

² Applicants with gross operating revenues exceeding \$2 million are required to meet the requirements of 49 C.F.R. § 1182.2(a)(5).

Applicants also assert that the proposed transaction would not result in an increase to fixed charges, as the proposed transaction is expected to be for cash.

Additionally, Applicants state that the proposed transaction would have no adverse effect on qualified Daniel's Charters' employees at the locations from which Daniel's Charters operates because Academy will interview and offer employment opportunities to those employees, which Applicants claim is "a necessity to permit Academy to continue to operate the assets acquired as a carrier."

According to Applicants, anticompetitive effects would be unlikely because none of the operable motor vehicles will be scrapped by the seller and no new buses will need to be purchased by Franmar at this time. Thus, Applicants state, the same number of buses presently operated will continue to be operated in Academy's bus operations in Georgia.³

On the basis of the application, the Board finds that the proposed acquisition is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

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This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.
3. This notice will be effective April 10, 2018, unless opposing comments are filed by April 9, 2018.

³ The Board notes that the Asset Purchase Agreement contains a non-compete agreement, which prohibits Daniel's Charters and its principal, for a period of time, from soliciting or otherwise competing with Academy in the geographic areas and jurisdictions in which Daniel's Charters currently conducts its motor coach operations. (Appl., Ex. at 35.) After a review of the contractual provision, however, the Board finds that the clause does not appear to have an anticompetitive effect, on balance, in the market.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: February 15, 2018.

By the Board, Board Members Begeman and Miller.